

Message Text

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ACTION EUR-12

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TAGS: EGEN, EEC, EINV
SUBJECT: EC MERGER CONTROL PROPOSAL IN TROUBLE

1. ACCORDING TO COMMISSION SOURCES, EC COMMISSION EFFORTS TO OBTAIN SOME CONTROL OVER COMPANY MERGERS ARE STILL ENCOUNTERING SERIOUS DIFFICULTIES AT THE MEMBER STATE LEVEL AND THE PROPOSAL MAY BE ABANDONED. THE MERGER CONTROL PROPOSAL WOULD INTRODUCE A NOTIFICATION AND SURVEILLANCE SYSTEM FOR MERGERS ABOVE A CERTAIN SIZE IN ORDER TO PROVIDE AN EC-WIDE VIEW OF MAJOR INDUSTRIAL CHANGES WHICH MIGHT AFFECT FREE COMPETITION. THE COMPETITION DIRECTORATE GENERAL HAS BEEN ACTIVELY PUSHING THE PROPOSAL SINCE 1973 BUT HAS MET OPPOSITION FROM SOME MEMBER STATES AS TO BOTH THE BASIC PRINCIPLE OF SUCH CONTROL AND THE MECHANISMS TO BE USED. THE
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ECONOMIC QUESTIONSWORKING GROUP OF THE COUNCIL DISCUSSED THE PROPOSAL AGAIN IN JUNE AND FAILED TO RESOLVE BASIC DIFFERENCES.

2. ITALY STILL HAS RESERVED ITS POSITION ON THE PRINCIPLE OF EC CONTROL OVER MERGERS, APPARENTLY FEARING THIS COULD CREATE OBSTACLES TO INDUSTRIAL

REORGANIZATION PROGRAMS AIMED AT MAKING ITALIAN INDUSTRY MORE COMPETITIVE WITH THE ADVANCED ECONOMIES OF THE COMMUNITY.

3. OTHER OUTSTANDING PROBLEMS CONCERN THE RIGHT TO FINAL DECISION ON EXCEPTIONS, APPLICABILITY TO STATE CORPORATIONS, SECTOR COVERAGE, AND THE THRESHOLD LEVELS OF SALES VOLUME AND MARKET SHARE ABOVE WHICH THE PROPOSED DIRECTIVE WOULD APPLY.

4. THE ISSUE OF FINAL DECISION MAKING AUTHORITY IS A MAJOR PROBLEM. THE FRENCH AND BRITISH BELIEVE THAT THE COUNCIL SHOULD HAVE THE FINAL SAY, WHILE GERMANS ARE SIDING WITH THE COMMISSION POSITION THAT IT ALONE (SUBJECT TO COURT OF JUSTICE CONTROL) CAN DECIDE ON THE LEGALITY OF A MERGER. THE COMMISSION BASES ITS ARGUMENT ON ARTICLE 86 OF THE EEC TREATY WHICH PROVIDES A POSTERIORI CONTROL OF ABUSES OF DOMINANT POSITION AND ARTICLE 235 WHICH AUTHORIZES INITIATIVES NOT SPECIFICALLY PROVIDED FOR IN THE TREATY ITSELF. THE COMMISSION (WITH THE SUPPORT OF THE FRG AND DENMARK) HAS TRIED UNSUCCESSFULLY TO CONVINCE THE FRENCH AND BRITISH THAT SINCE THEY HAD ALREADY GIVEN OVER FINAL AUTHORITY TO THE COMMISSION ON STATE AID QUESTIONS AND SINCE THESE WERE MORE CLOSELY TIED TO NATIONAL ECONOMIC POLICIES THAN MERGERS, AND EVEN STRONGER CASE EXISTED IN FAVOR OF LIMITED OFFICIAL USE

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COMMISSION AUTHORITY ON MERGER CONTROL.

5. REGARDING EXCEPTIONS, ITALY HAS MAINTAINED A GENERAL RESERVATION ON STATE-OWNED CORPORATIONS WHILE OTHER MEMBER STATES BELIEVE THESE COMPANIES SHOULD FALL UNDER THE MERGER CONTROL RULES WITH THE POSSIBLE EXCEPTION OF SOME PUBLIC UTILITIES. THE BENELUX COUNTRIES ARE ALSO SEEKING TO EXCLUDE THE BANKING SECTOR.

6. ON THRESHOLDS, THE FRENCH AND BRITISH SEEK MORE LENIENT CRITERIA. THEY WANT THE CONTROL PROCESS TO APPLY ONLY TO PROPOSED CONCENTRATIONS WHERE THE VOLUME OF SALES WOULD BE ABOVE ONE BILLION U.A. (ABOUT \$1.2 BILLION) WHILE SMALL COUNTRIES ARE SEEKING A 500 MILLION U. A. THRESHOLD. THE FRENCH WOULD ALSO EXCLUDE NOTIFICATION OF PROPOSED MERGERS WHERE THE NEW MARKET SHARE FELL BELOW 30 PERCENT WHILE THE COMMISSION WILL ACCEPT A MAXIMUM OF 20 PERCENT BEFORE NOTIFICATION BECOMES OBLIGATORY.

7. COMMISSION STAFF SOURCES SAY THEY ARE PESSIMISTIC REGARDING CHANCES FOR COMPROMISE IN THE FALL WHEN MEMBER STATE REPRESENTATIVES (COREPER) ARE DUE TO EXAMINE THE

STATUS OF THE PROPOSAL. RECENT TALKS BETWEEN ITALIAN OFFICIALS AND THE COMMISSION STAFF HAVE MADE IT CLEAR TO THE LATTER THAT ITALY IS REALLY NOT INTERESTED IN ANY SUCH PROPOSAL AT THIS MOMENT. EVEN IF THE ITALIANS WERE TO ACCEPT THE PRINCIPLE OF EC CONTROL, THEY WOULD LIKELY HAVE STRONG RESERVATIONS ON COVERAGE ETC. SOURCES ALSO SAY THE FRG WOULD PREFER TO BLOCK ANY PROGRESS ON THE COMMISSION PROPOSAL RATHER THAN SEE IT WEAKENED. IF THE FRENCH, BRITISH AND ITALIANS ARE UNWILLING TO ADOPT THE FRG POSITION, THE COMMISSION FEARS IT WILL HAVE TO DROP ITS PROPOSAL AND PERHAPS DRAW UP A NEW ONE BASED MORE CLOSELY ON ARTICLE 86. HINTON

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